

70-Doc. 9, R-44

IN THE SUPERIOR COURT OF DAWSON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

Prosecutor,

vs.

TOMMY WALDRIP,

Defendant.

CASE NO. 91-CR-300C

COMPETENCY TO STAND TRIAL Jury Trial proceedings

held in the above-entitled case, commencing on the

12th day of September, 1994; the Honorable John E.

Girardeau, Judge Presiding; taken down by Valerie N.

Almand, Certified Court Reporter.

APPEARANCES OF COUNSEL:

On Behalf of the Prosecutor:

LYDIA JACKSON SARTAIN, District Attorney
LEE DARRAGH, Assistant DA

On Behalf of the Defendant:

J. RICHARDSON BRANNON, Attorney at Law
ANN WATSON, Attorney at Law

VOLUME V

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1 P R O C E E D I N G S

2 THE COURT: Good morning, Ladies and
3 Gentlemen. Anything for the record before we proceed?
4 Apparently not.

5 MR. DARRAGH: Your Honor, I think I'd be
6 remiss in not moving for a directed verdict, and so
7 I will.

8 THE COURT: Very well.

9 MR. DARRAGH: I have heard all the testimony
10 and I understand that there has been some testimony that
11 might be considered prima facie in this matter.
12 However, I do not believe that the testimony in this
13 case has risen to the level to overcome the basic
14 presumption of competency to stand trial on which a jury
15 could rely, whether or not there's any positive evidence
16 of competency or whatever, and particularly also in
17 light of the testimony of Dr. Currie that he understood
18 the nature of the object of the proceedings against him
19 and his own relationship to those particular charges,
20 what the possible consequences were, et cetera, although
21 he has testified that he feels like he'd have some
22 difficulty communicating with counsel.

23 I believe when you take the evidence that's
24 been presented thus far as a whole, we have a matter
25 where he's simply choosing not to as opposed to not

1 being capable of that. However, all of those taken
2 together, the evidence presented thus far presents a
3 situation where a directed verdict of competency to
4 stand trial is appropriate, should be granted at this
5 time, and we therefore move for that.

6 THE COURT: The defense has presented
7 evidence on really all three points. Whether that would
8 be sufficient to overcome the presumption I think would
9 be a matter which the jury may well be able to conclude
10 that it would, and so I'm going to deny the motion for
11 directed verdict and we'll proceed with the evidence.

12 MR. DARRAGH: Yes, sir.

13 THE COURT: Ms. Pittman, bring in the jury,
14 please.

15 MR. DARRAGH: I'm going to be calling Dr.
16 Robert Storms first. I believe he's out in the hallway.

17 MS. WATSON: At this time, Your Honor, I'd
18 like to ask if the State has the copies of the raw data.

19 MR. DARRAGH: He just arrived a few minutes
20 ago. I'll ask him.

21 (Jury returned to the box).

22 THE COURT: Ladies and Gentlemen, if you
23 would just bear with us a few minutes. We had a little
24 difficulty getting started this morning.

25 DR. ROBERT J. STORMS,

1 after being first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. DARRAGH:

4 Q Thank you for the delay, Your Honor. We're
5 making an effort to comply with defense counsel's
6 request for copies of raw data.

7 Sir, will you state your name and your
8 occupation, please?

9 A Robert J. Storms, S-T-O-R-M-S. I'm the
10 director of Forensic Evaluation Services at Georgia
11 Mental Health Institute in Atlanta.

12 Q Okay. And how long have you been the
13 director of forensic services there?

14 A I've been there since December of 1990 --
15 last December of 1993. Prior to that I was the chief
16 psychologist for the forensic services division at
17 Central State Hospital in Milledgeville from February,
18 1988 through December of 1993, and then prior to that I
19 was a forensic psychologist at Washington State
20 Reformatory, Monroe, Washington, which is the maximum
21 security prison for western Washington State. I don't
22 know how much further you want me to go back.

23 Q Please go back as far as your experience.

24 A Prior to that I was the director of
25 psychological services at HSA Coastal Carolina Hospital

1 Q Have you reached conclusions that people were
2 competent to stand trial?

3 A Yes.

4 Q And have you testified to those conclusions?

5 A Yes.

6 Q Do you regard yourself as having --

7 MR. DARRAGH: Well, at this time, Judge, I'll
8 go ahead and ask the Court to declare him an expert.
9 I'll tender him as an expert in forensic psychology and
10 clinical psychology to be able to testify as to the
11 issues involved here.

12 THE COURT: Mr. Brannon?

13 MR. BRANNON: I don't wish to voir dire the
14 witness, Your Honor.

15 THE COURT: Very well. He may so testify.

16 MR. DARRAGH: Thank you.

17 BY MR. DARRAGH:

18 Q Now, in the context of performing these
19 evaluations can you state whether or not you regard
20 yourself as having any particular disposition as to
21 results you should or should not find in performing
22 these evaluations?

23 A No, we're set up as a neutral, basically,
24 friend of the Court service. We have -- as a matter of
25 fact, there is at least one state supreme court ruling

1 that designates us as a neutral, unbiased evaluation
2 service. We don't have any investment in whether
3 somebody's competent or incompetent, and we just
4 basically call them the way we see them.

5 Q Would that be in the Tolbert versus the
6 State, a White County case --

7 A Yes.

8 Q -- you were referring to?

9 A Yes, I was the subject of that. I think the
10 supreme court basically ruled that I was the judge's
11 witness in that case.

12 Q In that particular matter, there was a
13 defendant in which you found him incompetent to stand
14 trial based on your findings, is that right?

15 A That's correct.

16 Q Now, how often do you perform such
17 evaluations?

18 A Well, regularly, and I would say that in
19 Milledgeville it was at least five times a week, but in
20 Atlanta I have somewhat more administrative duties, so I
21 would say that -- you know, but those are -- competency
22 evaluations are a regular part of our general operating
23 procedures and we operate solely on the basis of
24 court-ordered evaluations, and those court orders always
25 include an opinion as to their competency to stand

1 trial.

2 Q All right, sir. And can you tell me whether
3 or not you find it helpful or not helpful to have some
4 information concerning prior psychiatric/psychological
5 interviews and testing of a person that you're looking
6 at?

7 A Well, like everything else, it depends. It
8 can be useful, depending on who did the evaluation and
9 how experienced they are in forensic issues, or it
10 cannot be. I mean, it just really depends. I like to
11 have as much data as possible, but any one particular
12 evaluation may or may not be helpful to me.

13 Q Why is it that you find, as you use the
14 phrase "as much data as possible" useful to you?

15 A Well, we like to get a comprehensive look at
16 the individual, and we as -- as comprehensive a look as
17 we can, and sometimes that has to come from sources like
18 other evaluations or from family members or from, you
19 know, if -- since we work with a lot of criminal
20 defendants, jailers can be quite useful and sometimes,
21 you know, even the janitors in the jails can be quite
22 useful, and so we just take in as many observations as
23 possible trying to get a large amount of data.

24 Q And that's to the extent that you're able to
25 do that in the time frame offered, is that correct?

1 the charges against you.

2 THE COURT: Let me offer this explanation to
3 the jury. Ladies and Gentlemen, the issue of whether or
4 not the defendant in this case is competent to stand
5 trial is a matter solely for your determination, and it
6 is not a matter for determination of any person or
7 entity other than the jury.

8 No witness may give an opinion as to
9 competency to stand trial. The witness may testify as
10 to whether or not the defendant is capable of
11 understanding the circumstances, the charges against
12 him, whether he was capable of assisting his counsel in
13 the case and other matters which the Court will instruct
14 you at the conclusion of the trial. The issue of
15 competency to stand trial is a matter that will be left
16 solely for your determination.

17 Go ahead, Mr. Darragh.

18 BY MR. DARRAGH:

19 Q How does -- let me see, let me start with a
20 very basic question. What would you describe the word
21 "diagnosis" as being?

22 A Basically to determine whether somebody has
23 some type of illness, whether it's a specific type of
24 illness, either physical or mental.

25 Q Okay. Can a person have a diagnosis of some

1 mental illness and nonetheless in your opinion meet all
2 the standards by which a jury can determine whether or
3 not he's competent to stand trial?

4 A Sure, yes.

5 Q In reference to your examinations of Tommy
6 Waldrip, can you state whether or not you observed
7 anything that you would describe as psychosis?

8 A No, not during my examination, no.

9 Q Assume for a minute that -- well, before
10 I get to that question let me ask you this.

11 MR. DARRAGH: And may I approach with
12 counsel, please?

13 (Recorded bench conference).

14 MR. DARRAGH: I believe the Court has already
15 ruled in my favor on this issue, but I want to make sure
16 before I go into it. He gave a history, Tommy Waldrip
17 gave a history to him, described that he was arrested
18 for burglary, received probation, said he'd been
19 arrested several times for DUI, 22 months in prison for
20 DUI and possession of stolen goods, had been in Dawson
21 County Jail since April 17, 1991. That's part of his
22 history.

23 Again, it goes into his understanding of the
24 legal system. So I want to be asking him about that as
25 well as the other history that he gave him, and I might

1 as well go ahead and raise this at this time. I at one
2 point want to introduce in the trial of this case the
3 certified copies of prior convictions of Mr. Waldrip,
4 which indicate that either pleas, verdicts, et cetera,
5 but also his understanding of being involved in the
6 criminal system before, and as it relates to
7 understanding the nature and object of the proceedings
8 against him, and I believe it does, and it goes to those
9 issues, so I wanted to go ahead and raise both of those
10 to the Court.

11 THE COURT: Let's take those one at a time.

12 MR. BRANNON: First, my response would be
13 that we're talking about does he understand the legal
14 system presently, and I think evidence that he has had
15 legal problems before this at some time in the future
16 does not lend any relevance to the present hearing. The
17 present hearing is strictly his present ability to
18 understand the system and communicate with his lawyers.
19 So first, for that reason it would not be relevant to
20 any issue in this case.

21 Secondly, I will continue to state that
22 character evidence is not relevant in a civil
23 proceeding. In this proceeding it's not relevant
24 because the only issue is the present state of mind as
25 to incompetency of Mr. Waldrip.

1 So for both of those reasons, we would
2 object. Anne, do you have anything you want to add?

3 MS. WATSON: (Shakes head negatively).

4 THE COURT: I have some concern about that.
5 I think it's marginal. I understand what you're
6 arguing, basically that one having gone through things
7 in the past would permit an inference that that would
8 assist them in understanding similar circumstances now.

9 MR. DARRAGH: Yes, sir.

10 THE COURT: And that's a logical -- I think
11 that's a logical conclusion. I guess the part of that
12 that troubles me most is in that the issue is whether he
13 understands -- that he's mentally capable of under-
14 standing his present circumstances and his relation to
15 the proceedings and the people involved, whether he's
16 capable of doing it. That issue is not informed by
17 whether he may have done it in the past. I mean, one
18 may have been tried five times, but that fact does not
19 inform us of whether he's currently capable.

20 If it were a question of does he have
21 information, it would, because one's gone through it
22 before. If the question were is one experienced then it
23 would be an obvious conclusion. But when we're focusing
24 on capability to understand, that's a function of his
25 mind and not a function of prior experience, it seems to

1 me. So come back again at me.

2 MR. DARRAGH: Yes, sir.

3 THE COURT: You hear my concerns.

4 MR. DARRAGH: I hear your concerns, all of
5 which, respectfully, seem to go to the issue, the sole
6 issue of capability. But it's also the understanding of
7 the nature and object of the proceedings against him and
8 his own condition in relation to those.

9 THE COURT: Whether he's capable of doing
10 that.

11 MR. DARRAGH: Yes, and having had previous
12 knowledge and previous experience with the criminal
13 justice system lends to that capability.

14 THE COURT: Does it? Capability?

15 MR. DARRAGH: Yes, sir. And yes, sir,
16 certainly it does. An analogy, for instance, can be
17 drawn, an analogy can be drawn from if we're in a
18 Jackson-Denno hearing, for instance, this Court can
19 determine -- now, in a criminal case you can't bring in
20 prior record except for all the exceptions that might be
21 there, but you can't bring in prior record in the
22 criminal case.

23 This is, of course, a different situation.
24 But in that case if we're in a Jackson-Denno hearing,
25 for example, the Court can hear and consider evidence

1 that he had been given Miranda warnings before in
2 determining whether or not he understands Miranda
3 warnings now, and even, I would suggest, is capable of
4 understanding Miranda warnings now, because the issue to
5 be decided is whether or not he was voluntarily giving
6 it up and all that sort of situation there. And so I
7 think an analogy can be drawn there.

8 Further, I was allowed to ask these questions
9 of Dr. Currie yesterday. Now, we have not explored the
10 second part of what I said, but I was able to ask these
11 questions of Dr. Currie yesterday.

12 THE COURT: I think in a Jackson-Denno
13 hearing at least part of the question involved there is
14 whether there is a knowing waiver; that is, whether or
15 not a defendant has received information to which he may
16 then intelligently respond. And on the issue of whether
17 or not he has received information, whether one has
18 received that same information in the past would bear on
19 that issue.

20 The issue in a Jackson-Denno hearing is --
21 sometimes does not involve but is never limited to the
22 question of whether a defendant is capable of
23 understanding that which he has been told. It may
24 involve that issue, but it's never just limited to that.
25 Part of the inquiry is always has he received

1 information to which he can then respond, and on that
2 aspect of the inquiry, of course if he's been given that
3 information, one, two, three, four, five times in the
4 past, it informs us of his possession of that
5 information to which he could respond.

6 We did go into it yesterday and, you know,
7 I'm thinking at the time something of the marginal
8 nature of it.

9 MR. DARRAGH: And another thing is, Judge,
10 that --

11 THE COURT: Let me go -- I'm sorry, I'm
12 sorry. My thoughts are running here.

13 MR. DARRAGH: I understand.

14 THE COURT: If we had involved here a
15 question something similar to that which we have, if we
16 have a knowing and intelligent -- if part of the
17 question were here is he capable of and is there a
18 knowing and intelligent participation or understanding
19 the nature of the consequences and his relationship to
20 proceedings, things of that sort, then we would be
21 delving into the information supplied him and his,
22 secondly, capability of understanding that and response.
23 But really, no part of our inquiry here is his receiving
24 and response to information, but whether he is capable
25 of understanding that information which has either been

1 supplied or would be supplied him.

2 MR. DARRAGH: Sure, and part of that
3 capability is memory. Part of that capability is a
4 memory that a person has of what his past has been, what
5 he's been involved in, what consequences he's had.
6 Memory is certainly directly relevant to the ability of
7 being able to communicate with counsel, whether or not
8 he has a memory of things, you know.

9 One thing that I've asked the judge to charge
10 the jury eventually is it's not whether he chooses to
11 provide his counsel with information, but whether he's
12 capable of providing his counsel with the information.
13 We contend that he's capable, and part of that
14 capability is shown by what he's able to bring up in his
15 memory concerning his own past, concerning his own
16 history.

17 THE COURT: What about that? Because part of
18 -- why is that not part of it?

19 MR. BRANNON: Memory?

20 THE COURT: Yes. I mean, part of what we're
21 going into is both short-term and long-term memory here,
22 and if a person has gone through something in the past,
23 participated in the process, why wouldn't his ability to
24 remember at least certain aspects of it, what your role
25 is, what the prosecutor's role is, what the judge's role

1 is or what the nature of the proceedings are, that is
2 they're there to determine his guilt or innocence on the
3 charges, why wouldn't his memory of that from the past
4 be relevant?

5 MS. WATSON: May I respond?

6 THE COURT: Yes.

7 MS. WATSON: Your Honor, I would say you've
8 got to have the engine running first before memory has
9 any significance. He's got to be capable of
10 understanding that. No matter if he can pull it up from
11 his memory, he's got to be capable of understanding that
12 memory, and it can be there and he can parrot the words,
13 but he's got to be able to comprehend the words, too.

14 THE COURT: Yeah, that's true. That's true.
15 He would have -- it would have to be shown that he's
16 capable of doing it.

17 MR. DARRAGH: And Your Honor, he's also
18 charged in this case with possession of firearm by a
19 convicted felon. His past record is -- and his
20 understanding of that particular charge, it's fully
21 relevant to that particular issue. This is a charge
22 that he's got, part of that is the fact that he is a
23 convicted felon and knows he's a convicted felon, and
24 that goes to understanding the nature of the proceedings
25 against him, the nature of that charge, and --

1 THE COURT: All right. What was your second
2 request was to do what, offer what evidence?

3 MR. DARRAGH: It was, eventually, eventually,
4 not through this witness, but I wanted to go ahead and
5 raise the issue, to present certified copies of the
6 prior convictions of Mr. Waldrip.

7 THE COURT: Okay.

8 MR. DARRAGH: I mean, that's not something
9 that necessarily has to be decided right now because
10 I won't do it with this witness.

11 THE COURT: It sort of goes with this.

12 MR. DARRAGH: It does, that's why I raised
13 it.

14 THE COURT: I'm going to take a short break
15 at this point and then I'll rule when we return.

16 (Recorded bench conference concluded).

17 THE COURT: Ladies and Gentlemen, we're going
18 to recess for ten minutes.

19 (Short recess).

20 THE COURT: Mr. Darragh, outside the presence
21 of the jury, let me have you elicit from Dr. Storms'
22 evidence which would connect/not connect Mr. Waldrip's
23 prior history to his current capability as it would
24 relate to one or more of the three elements of
25 competency to stand trial, and then I'll give Mr.

1 Brannon and Ms. Watson an opportunity to cross-examine
2 that issue.

3 Do you see what I'm asking you to do or do
4 you understand?

5 MR. DARRAGH: I think so, Judge. I'll try,
6 and if we're not on base if you could redirect me I'd
7 appreciate it, but I think I know where you're coming
8 from.

9 THE COURT: Let me try one more shot at it.
10 You had made the argument at the bench that his prior
11 criminal history would help inform the jury as to his
12 current capability as it relates to competency to stand
13 trial. It seems, though, that may be a more of a
14 psychological than a legal issue.

15 MR. DARRAGH: Perhaps.

16 THE COURT: So why don't we explore that with
17 this witness and we'll give Mr. Brannon an opportunity
18 to cross-examine on that, and depending upon the
19 information offered then I'll rule on the issue.

20 MR. DARRAGH: Yes, sir.

21 BY MR. DARRAGH:

22 Q Dr. Storms, I'll try to make my questions
23 clear so you'll understand where we're coming from here.
24 Starting first with the history/identifying information
25 you reported to me, what did Mr. Waldrip report to you

1 that you denominated identifying information?

2 A Specifically about his criminal history, is
3 that what you're asking?

4 Q Well, it's kind of brief. Would you include
5 that -- I want to include that and that's the major
6 issue here, but also the other, since it is brief.

7 A Basically that he was born and raised in
8 Georgia, he completed high school, attended Emmanuel
9 College, obtained a degree in theology from Georgia
10 Baptist College. He worked for -- he reported that his
11 longest period of work was when he founded and pastored
12 a church in South Carolina and he was with that church
13 for I guess eight years, and he also has been
14 self-employed as a house painter and also as a barber.

15 He stated that in 1984 he was arrested for
16 burglary and he received a probation for that. He
17 stated that he'd been arrested several times for DUI and
18 spent twenty-two months in prison for DUI, I don't know
19 where, and possession of stolen goods, and that he's
20 been in the Dawson County Jail since April 17th, 1991,
21 that he's been married two times to the same woman, and
22 they have three grown sons, ages twenty-five,
23 twenty-seven, twenty-nine, and that his parents are
24 still alive.

25 Q Okay. Having stated to you some of his past,

1 particularly in reference to his criminal history, can
2 you state whether or not you can relate to him being
3 able to recount that information to capability of
4 understanding the nature and object of the proceedings
5 against him and the issues that we're exploring here as
6 to competency?

7 A Well, if I understand your -- let me try to
8 take a stab at it here. We take a criminal history as a
9 natural -- as a matter of course in our job with the
10 forensic division statewide. Basically that's because a
11 number of our defendants naturally are -- you know, have
12 prior criminal histories.

13 This is -- the reason that it's important
14 that we do this is because sometimes somebody who has a
15 lengthy criminal history or at least a criminal history
16 certainly has been involved with the justice system
17 before and certainly understands probably their Miranda
18 rights, that becomes an issue at various times.

19 They certainly understand, you know, what an
20 attorney does and basically what officers of the Court
21 do if they've been involved in courtroom -- in the
22 judicial system before, and they certainly understand,
23 have firsthand knowledge of what a conviction can lead
24 to on various charges. So from that standpoint it is --
25 you know, it is an aspect of our standard competency

1 evaluation to ask about criminal history.

2 THE COURT: It would certainly show
3 information, but how would it inform us as to capability
4 to understand?

5 THE WITNESS: Are you asking me, Your Honor?

6 THE COURT: Yes, sir.

7 THE WITNESS: Well, capability means just
8 basically the capacity to understand something or other.
9 If somebody can -- one of our rule of thumbs is if
10 somebody can communicate to us directly and logically
11 and coherently, then they are certainly able to
12 communicate to an attorney directly and logically and
13 coherently.

14 In terms of a specific criminal history,
15 again a lot of it depends. We don't really go into the
16 nature of the charges, past charges, but if they're
17 relatively sophisticated crimes or at least crimes that
18 involve sequential thought, that in my opinion goes to a
19 capability of understanding charges and capability of
20 communicating with an attorney, if they're able to carry
21 out some kind of sequential action.

22 And generally, and I know that it's a very
23 anecdotal rule of thumb, but the less sophisticated the
24 crime, such as terroristic threats or criminal trespass,
25 generally we have more of a chance of some kind of

1 mental illness than we do in terms of things like
2 burglary or armed robbery, because those events indicate
3 the ability to think in sequence and to plan and to
4 understand the ramifications of your actions.

5 BY MR. DARRAGH:

6 Q And can you relate any of that, his ability
7 to remember those things, to an ability, for instance,
8 to remember facts of some three and a half years ago
9 now?

10 A Sure. I mean, if he's able to remember -- if
11 he's able to remember the facts or, you know, if he's
12 able to remember prior arrests and what he was arrested
13 for and why he was arrested and his version of the story
14 in a prior arrest, I see no reason why he would not be
15 able to remember other things.

16 Q Including facts of the crime, for example, in
17 order to be able to communicate them to counsel?

18 A Sure. Yes. I mean, I see no reason why he
19 can't remember facts of a crime.

20 Q Is there a difference between can't and
21 won't?

22 A Yes.

23 Q Psychologically speaking?

24 A Yes.

25 Q So that a person --

1 A The can't is basically an inability, and
2 won't is a choice.

3 Q And --

4 MR. DARRAGH: I think that's all I have at
5 this time.

6 THE COURT: Mr. Brannon.

7 MR. BRANNON: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. BRANNON:

10 Q He's been able to relate this history that
11 you've given about high school education, parents, wife
12 and children, even previously on Dr. Jerold Lower's
13 evaluation, did he not?

14 A To my understanding. You'll have to ask
15 Dr. Lower, but I think he did, yes.

16 Q Have you not read Dr. Lower's evaluation?

17 A I've skimmed it. I haven't read it in
18 detail.

19 Q So you don't know whether he gave Dr. Lower
20 any history or not then, is that your answer?

21 A No. I'm assuming he gave Dr. Lower a
22 history, because it's a standard operating procedure in
23 the forensic services division statewide to ask for a
24 history.

25 Q Okay. And you have evaluated many people who

1 were, indeed, mentally ill who could give you a family
2 history, have you not?

3 A Yes, that's true, and I've evaluated many who
4 couldn't.

5 Q You evaluated mentally retarded people who
6 could tell you who their parents were, who their
7 brothers or sisters were, where they lived, where they
8 were born, those sort of superficial events they could
9 tell you about, correct?

10 A Sure.

11 Q So there's nothing unusual, if somebody has a
12 mental illness there's nothing unusual with that person
13 being able to relate those sort of items to you from
14 memory.

15 A No, they can often do that.

16 Q And your testimony today is that if they can
17 relate those sort of items to you by memory that
18 therefore it follows up logically that they're able to
19 understand the charges against them, understand their
20 position in relation to those charges and communicate
21 effectively with their lawyers, is that your testimony?

22 A Well, my testimony is --

23 THE COURT: Mr. Brannon, you can pursue this,
24 but I want you to know your line of questioning here
25 goes to a conclusion which a jury would have to draw.

1 I'm not trying to draw a conclusion from his testimony
2 other than whether this witness has information which
3 should be offered to the jury for the jury to consider
4 as to whether or not prior history would inform us on
5 the issue of current capability.

6 MR. BRANNON: I don't know that a
7 cross-examination at this point would be effective.
8 I could argue to the Court from what's already in the
9 record.

10 THE COURT: I don't know, and you can pursue
11 that, but the line of your examination there goes to the
12 conclusion that ought to be drawn from the information
13 that he could give on that issue, and I'm not doing
14 that. That would be for the jury, if it is allowed.

15 MR. BRANNON: Okay. Maybe I'm confused.
16 I was under the impression that we were --

17 THE COURT: Maybe Ms. Watson understands
18 that, I don't know.

19 MS. WATSON: I think I do.

20 THE COURT: Speak to your co-counsel, then.

21 MS. WATSON: May I ask him a few questions?
22 Because I think I understand --

23 THE COURT: No, I won't do that. I mean,
24 once we've got one lawyer on a witness we're just going
25 to have to deal with one lawyer.

1 BY MR. BRANNON:

2 Q An inmate being able to recall a prior crime
3 for which he was arrested or incarcerated, that is also
4 information that it's not unusual to receive from
5 someone even when they're mentally retarded or mentally
6 ill sometimes, is it?

7 A No, they can remember that.

8 MR. BRANNON: That's all the questions
9 I have. I'll make argument.

10 THE COURT: I'm sorry?

11 MR. BRANNON: I have argument to make before
12 the Court.

13 THE COURT: Anything new?

14 MR. BRANNON: Well, one thing that I didn't
15 point out that I would like to point out we've heard in
16 court is from another expert, since we're voir diring
17 this one a little bit, Dr. Currie testified that he did,
18 he was able to relate superficial information from
19 memory, but that didn't necessarily automatically
20 interpolate into a formula whereby he could communicate
21 with his lawyers and understand the charges, so I just
22 am reminding the Court that that's how I understood
23 Dr. Currie's testimony in this matter.

24 THE COURT: And that may well be. That's a
25 conclusion for the jury to draw, and to the extent that

1 there would be any differences between that witness and
2 this witness would be a matter for the jury, and not for
3 the Court to exclude this witness' testimony because of
4 another witness' testimony. I'll allow it over
5 objection.

6 MR. DARRAGH: Thank you, Your Honor.

7 MR. BRANNON: Now let me perfect that
8 objection and make sure that the record is clear.

9 THE COURT: Go ahead.

10 MR. BRANNON: We are objecting on Fifth
11 Amendment grounds, Sixth Amendment grounds and also on
12 Eighth Amendment grounds, all that apply to the
13 Fourteenth Amendment due process clause.

14 THE COURT: Very well, counsel's final
15 argument there is incorporated in the prior objection
16 made.

17 MR. BRANNON: Thank you.

18 THE COURT: And the Court would renew its
19 overruling of the objection. The testimony may be
20 offered, Mr. Darragh, as is proper, and Ms. Pittman, you
21 may bring in the jury.

22 MR. DARRAGH: Thank you, Your Honor.

23 (Jury returned to the box).

24 THE COURT: Ladies and Gentlemen, even after
25 our break there was a matter I need to take up with the

1 attorneys outside of your presence, so I just called you
2 into the jury room there and rather than bringing you in
3 and having a bench conference, I think we're ready to
4 proceed at this point.

5 Mr. Darragh, further examination of this
6 witness.

7 MR. DARRAGH: Thank you.

8 BY MR. DARRAGH:

9 Q You had provided a report to the Court in
10 conjunction with Dr. Kugler and a copy of that to Mr.
11 Brannon and a copy to the district attorney concerning
12 your evaluation, is that correct, sir?

13 A That's correct.

14 Q And as a part of your interview process with
15 Tommy Waldrip can you state whether or not you sought to
16 find out anything which you denominated as identifying
17 information in your report?

18 A Yes.

19 Q And what was the identifying information that
20 was given to you by Tommy Waldrip?

21 A Basically that -- this comes under the
22 section of identifying information, that he's
23 forty-eight years old, he was -- he's charged with a
24 crime. He was born and raised in Georgia, he completed
25 high school, he attended Emmanuel College, obtained a

1 A Do you mean do I think he would be -- which
2 particular charge, the convicted felon?

3 Q This particular Charge Number Sixteen.

4 A The possession charge? I mean, I see no
5 reason why he would not be able to understand this
6 charge. I mean, when somebody is a convicted felon and
7 they're out, they certainly know that they're not
8 supposed to be in possession of a firearm.

9 Q That's not what I'm asking, I guess, Dr.
10 Storms, and it is this: If the charge states that he
11 had been convicted of burglary and then alleges that he
12 was in possession of a firearm, how can you relate his
13 knowledge of having been convicted of a burglary to his
14 being able to understand what this charge is?

15 A Okay. Basically I'll just have to go back,
16 as I said, that burglary and types of crimes such as
17 that involve some type, you know, basically involve an
18 ability to think and an ability to think about the
19 judicial system, and so I guess the answer to your
20 question would be that he would certainly be able to
21 understand the charge, this particular charge against
22 him based on his prior history of involvement with the
23 criminal justice system.

24 Q As far as the physical description of Mr.
25 Waldrip as you made a part of your report, what did you

1 describe there?

2 A That he was of medium height with a muscular
3 body build for his frame. He had no apparent physical
4 defects, sensory problems. He wore glasses for reading,
5 he reported no serious illnesses or operations in his
6 lifetime, and his history for neurological trauma, that
7 is serious head injury, is negative or he doesn't have
8 any.

9 Q Okay. Did Mr. Waldrip have any record of any
10 psychiatric hospitalizations?

11 A No, he did not. He was not a -- had not been
12 an inpatient in a psychiatric hospital and had not,
13 until his current incarceration, had any history of any
14 outpatient psychiatric treatment with a mental health
15 center.

16 Q All right. Would you describe, please, the
17 -- tell us some of your observations that relate to Mr.
18 Waldrip's ability to communicate with you as you talked
19 with him?

20 A Well, Mr. Waldrip was -- well, first of all,
21 he was, throughout the entire testing period, he was
22 oriented to time, place, person and situation, and what
23 that means is he was basically well-oriented to reality.
24 He knew where he was, why he was there, what his name
25 was. He generally, he knew the time of day.

1 Basically his reality contact was excellent.
2 He talked to us, he was a very -- fairly articulate, his
3 communications with us were coherent, they were logical
4 and they made sense. He did exhibit some mild paranoia
5 when he was -- during the course of the interview
6 because he stated that he believed that the sheriff's
7 department had a device that monitors his thoughts
8 twenty-four hours a day, and he felt that he could --
9 believed he could hear the sheriff's voice as well as
10 the voice of various jailers continually. However, he
11 didn't seem to be hearing voices when we talked to him,
12 nor did he seem to be responding to voices.

13 I don't know how much further you want me to
14 go with that.

15 Q Okay. Let me ask a few questions, then.

16 A Sure.

17 Q Did he state to you whether or not the
18 monitoring that he described was presently taking place
19 while you interviewed him?

20 A He said it was, yes.

21 Q Was there anything about your observations of
22 him which gave you any indication or thought that
23 anything was going on to which he was responding?

24 A No. If I can amplify that a little bit.

25 Q Please do.

1 A People that state that they hear voices or
2 have intrusive thoughts like this often usually respond
3 like they're hearing the voices at the present time,
4 unless they're on some type of medication. We see a
5 great many people that are diagnosed with schizophrenia,
6 for example, that generally hear voices talking to them
7 and they act like they're responding, they act like
8 they're listening or they're talking back to them, and
9 Mr. Waldrip just didn't appear to be hearing voices.

10 Q Okay. Have you used the term in connection
11 with your evaluation of him or the phrase,
12 "idiosyncratic thought process?"

13 A Yes.

14 Q And what do you mean by that and how does
15 that relate to Mr. Waldrip?

16 A Well, my opinion is that sitting in the
17 Dawson County Jail for this number of years basically in
18 isolation, you know, I mean he's got a fairly vivid
19 imagination and he's a fairly bright guy, and so he's
20 kind of created this idea, you know, that there's this
21 device that can monitor his thoughts all the time
22 because there, I guess, somewhere in connection with his
23 jail cell is a monitor where people do communicate with
24 each other.

25 This isn't very unusual for people that have

1 demeanor and -- indicated that he perfectly well
2 understood what I was saying to him.

3 Q Okay. Did he take the opportunity to read
4 those things himself?

5 A Yes, he read them while I explained them to
6 him.

7 Q Now, can you state whether or not you were
8 charged in the order from the Court not only to
9 determine issues related to competency to stand trial
10 but whether or not there was any criminal responsibility
11 at the time of the act alleged?

12 A Yes, it was a standard court order asking us
13 for a degree of criminal responsibility or mental
14 competency at the time of the act.

15 Q In seeking to carry out that part of the
16 order can you state whether or not you sought to ask
17 Tommy Lee Waldrip about the facts of this case?

18 A Yes, we did.

19 Q And what did he respond?

20 A He said he didn't -- well, his exact response
21 was he wasn't there.

22 Q Okay. Did you ask him to go into any more
23 detail with you?

24 A No.

25 Q In your report can you state whether or not

1 you recounted Mr. Waldrip declined to discuss his case,
2 as is his legal right?

3 A Yes.

4 Q And what did you mean by that?

5 A I mean that when we wanted -- he basically
6 requested that he not discuss the facts of his case,
7 which is his legal right to do, his legal and
8 constitutional right not to, and so we did not press it.

9 Q And did he ask you not to discuss the facts
10 of his case?

11 A I really don't remember. I just know that he
12 indicated he didn't want to discuss the facts of his
13 case, and our policy is that we don't press them.

14 Q All right. How, if you can, can you relate
15 that to his understanding of his legal situation?

16 A Well, it certainly indicates that he is able
17 to cooperate with his attorney and that he -- that many
18 -- he also, in my opinion, realizes that anything that
19 he could have said, as we explained in his rights, could
20 be brought out in court, so that if he -- you know, we
21 didn't press it, he realized the legal ramifi- -- he
22 realized the ramifications of anything that he could
23 tell us about the facts of the case, and he chose not to
24 tell us.

25 Q All right. What is a Ray test? Do you know

1 about that?

2 A Well, the Ray Auditory Verbal Learning Test,
3 I guess that's what it is, is basically, it's a part, a
4 neuropsychological screening inventory for -- basically
5 it's used to test memory functions and brain damage.

6 Q Okay. Did you find that -- you didn't
7 perform such a test in this particular evaluation, is
8 that correct?

9 A No, no.

10 Q And why did you not?

11 A It's not relevant to what I needed to find
12 out.

13 Q And how so?

14 A Well, for its purpose, it's a pretty good
15 test. If somebody has been in an automobile wreck and
16 has had diagnosed brain damage from an MRI it's a pretty
17 good test to see how impaired your memory is. But in
18 terms of this, it had nothing to do with the things that
19 I had to find, that I had to figure out, which is, you
20 know, the three aspects of competency. So it was just,
21 as far as I was concerned, it's an irrelevant test for
22 forensic purposes.

23 Q Based on your -- one moment, please.

24 (Short pause).

25 Q Based on your examination, your testing, your

1 opinion, at least the way my practice has seemed to have
2 gone, that somebody that's charged with a crime that's
3 basically reactive, such as criminal trespass often is
4 or public drunk or something like terroristic threats,
5 there is oftentimes -- there are many times more mental
6 illness at play than in more sophisticated crimes such
7 as burglary and armed robbery and things like that.

8 Q Just because it's a serious crime does not
9 really impact the issue of mental illness, does it?

10 A I'm not sure what you -- could you repeat the
11 question, rephrase it?

12 Q Well, if somebody commits a voluntary
13 manslaughter, all of a sudden they shoot somebody in the
14 heat of passion, how do you relate that? That's a more
15 serious type of crime.

16 A Well, that's true. And I'm talking about --
17 that's true, and oftentimes murder and manslaughter are
18 often heat of passion crimes, and that's very true.

19 Q Wouldn't fit your mold?

20 A No, that wouldn't fit that particular aspect
21 of it.

22 Q So there are many serious crimes that are
23 committed that would not fit the mold, is that correct?

24 A Sure.

25 Q When you saw Mr. Waldrip on Briarcliff Road

1 down in Atlanta, I wasn't there, correct?

2 A That's correct.

3 Q And Ms. Watson, the lady seated over here
4 closest to me, she wasn't there, was she?

5 A No, she wasn't.

6 Q You knew we were her attorneys, did you not?

7 A I knew you were.

8 Q Okay. So you had Mr. Waldrip all to yourself
9 without his lawyers being there for his evaluation.

10 A In a manner of speaking, sure.

11 Q You would call that neutral ground, wouldn't
12 you? From your standpoint that's neutral ground, not
13 having the lawyers there to deal with, isn't it?

14 A It can -- yeah, generally.

15 Q Thank you. Now, I believe you testified that
16 the clinical portion lasted one half hour, am I right
17 about that?

18 A No.

19 Q Okay. What did you --

20 A The clinical interview lasted around three
21 hours altogether and the testing probably lasted
22 another, oh, two, two hours and forty-five minutes or
23 three hours and fifteen minutes. They got out of there
24 about 4:30. But we had a pretty good -- what we're
25 talking about when we're saying the clinical -- what I'm

1 referring to is that that's both the clinical interview
2 as well as, you know, the competency portion of the
3 interview.

4 Q Okay. Maybe I wrote it down wrong. I
5 thought you said there was one half hour spent on the
6 clinical portion and one hour on competency issues.

7 A No, it was a good hour and a half to two
8 hours at least on clinical interviews.

9 Q All right. And did you personally --
10 I believe you did -- administer the MMPI?

11 A Yes, I did.

12 Q And you testified about the MMPI being a
13 self-administering test, self-administered test?

14 A Well, in the sense that you don't stand there
15 and read the questions to them if they're capable of
16 reading.

17 Q Okay. It has just a little instruction page
18 at the front that's very short?

19 A Yes.

20 Q That says that you answer the questions true
21 and false, am I right?

22 A That's correct.

23 Q And that you take a pencil and you darken for
24 either true or false, whatever you choose?

25 A That's correct.

1 had to say, about hearing voices and things he sees on
2 TV and radiation burns on his face and all the things
3 that the jury has heard, you came to the conclusion that
4 he has mild paranoid ideation.

5 A Yes, this was fairly mild in comparison to a
6 lot of paranoids that I see. I didn't say that it
7 wasn't real, I just said it was mild.

8 Q When does it start to get beyond mild?

9 A Well, I can give case examples.

10 Q Let me ask you this: Would you define
11 paranoid ideation as suspicious thinking that is
12 persecutory, accompanied by feelings that one is being
13 harassed, treated wrongly or being judged critically?

14 A That's a good definition, sure.

15 Q Okay. Were you able to come to some
16 conclusion about why it is that he hears voices and has
17 radio waves go through his teeth and when he brushes his
18 teeth he can cut off the thought processes? Were you
19 able to form a diagnosis on that?

20 A Well, as I stated, I think a lot of this
21 arose, a lot of this type of thinking arose while he's
22 been sitting for this number of years in the Dawson
23 County Jail. He was very clear with us that he didn't
24 think about this prior to his incarceration, and he was
25 very clear about that.

1 I've announced my opinion that this was
2 basically stress induced. I didn't say that it wasn't
3 real because it certainly is probably real to him, but
4 at the same time it just, you know, he doesn't have a
5 history of, for instance, schizophrenia or any type of
6 psychiatric hospitalization or outpatient treatment.
7 He does have a history of drinking.

8 So it's my best opinion based on this data
9 that this is basically a stress in that this is
10 basically stress-induced stuff, and once the stress is
11 relieved this type of thinking may very well clear up by
12 itself.

13 Q So if a person is under a lot of stress, such
14 as Ms. Watson during this jury trial, and she starts
15 telling me she's hearing voices and radio waves are
16 going through her face and all of those various things,
17 she's just suffering from stress and you would come up
18 with a diagnosis of mild paranoid ideation.

19 A Well, with all due respect to a number of
20 paranoid trial attorneys, many -- this is a very -- many
21 attorneys get a little bit paranoid during trial.
22 I don't know if I would come up with that diagnosis or
23 not.

24 Q It would be stress, though, stress-related.

25 A It would certainly be stress-related.

1 Q And the relating of those events to you by
2 Tommy Waldrip does not meet your category for a
3 delusion, correct?

4 A I mean, it could be a mild delusion. I mean,
5 that's not a -- that's not something that particularly
6 has an impact on my thinking about his relevancy. He
7 may have some kind of mildly delusional thinking. At
8 this point it's kind of quibbling because his reality
9 contact in general is so good, his ability to
10 communicate is so good, and he certainly didn't seem to
11 be responding to voices when we were interviewing him,
12 and over the course of a three-hour interview usually
13 people who hear voices and have auditory hallucinations
14 start to respond to them.

15 Q Okay. Would the definition of a delusion be
16 a conception of a disordered mind which imagines facts
17 to exist which there is no evidence in and belief?

18 A That's -- yeah, that's a definition of
19 delusion.

20 Q Okay. You came to the conclusion that he did
21 not suffer from psychosis, that he's in touch with
22 reality at all times.

23 A Yes, I think he's in touch with reality.

24 Q Okay. And you testified earlier to the jury
25 that mentally retarded people, and I wrote down, know

1 perfectly well why they're on trial and how to
2 communicate with counsel.

3 A Well, that's fine, except you need to have
4 said some mentally retarded people know perfectly well.
5 There is a wide range of variation of skills and
6 cognitive abilities among the mentally retarded, so some
7 mentally retarded individuals know very well why they're
8 on trial and what they're charged with.

9 Q That's the reason I was asking it. I
10 understood it to be mentally retarded people in general.
11 So some mentally retarded people would know.

12 A Some would.

13 Q And some would not.

14 A Some would not.

15 Q And on Mr. Waldrip, what is your specific
16 diagnosis of the mental disorder?

17 A I think we might have given him a delusional
18 disorder of some type. It was not a very firm -- I
19 mean, the problem is that this was not a very firm
20 delusion in my opinion, so it's some type of delusional
21 disorder.

22 Q As a matter of fact, as you look through the
23 four pages of your psychological you didn't give him a
24 final diagnosis, did you?

25 A Well, not in the -- we have to for

1 statistical purposes, but he would not have a final
2 diagnosis, that's correct, in terms of this letter he
3 would not have a final diagnosis.

4 Q So today he could be delusional, according to
5 your diagnosis today.

6 A Well, I'm not sure what you mean by that
7 statement.

8 Q Well, you said it, I didn't, so I'm asking
9 you.

10 A Well, could you hold on just a second while
11 I look through my records to make sure?

12 Q Sure.

13 A He was at one time given a diagnosis of a
14 paranoid delusional disorder, but I don't know if this
15 is the one that we gave him or Dr. Lower gave him, so I
16 would suggest you'd have to ask Dr. Lower about that.

17 Q Okay. And you and I have already agreed that
18 a delusion is a conception of a disordered mind which
19 imagines facts to exist of which there's no evidence and
20 belief.

21 A Basically, yes.

22 Q Thank you. You are familiar, I assume, with
23 -- let me read off some more tests and see if you're
24 familiar with these. You're familiar with the Wide
25 Range Achievement Test.

1 A Yes.

2 Q And you're familiar with the, is it Rorschach
3 Psychodiagnostic?

4 A The Rorschach Psychodiagnostic Test, yes.

5 Q And you're familiar with the Millon Clinical
6 Multiaxial Inventory, II.

7 A Yes.

8 Q You're familiar with the Weschler Adult
9 Intelligence Scale.

10 A Yes.

11 Q And you are familiar with the -- you've
12 already said you're familiar with the Ray Functional
13 Test.

14 A Yes.

15 Q Okay. Would you agree or disagree with the
16 concept that someone can parrot the correct words to a
17 question but not comprehend the significance of those
18 words?

19 A Well, in a very broad general sense, not in
20 this particular instance.

21 Q I understand your opinion is that he
22 understood. I'm just asking if that's possible.

23 MR. BRANNON: I'm almost through, Judge, just
24 a minute.

25 BY MR. BRANNON:

1 Q All the problems which have been related in
2 your psychological and in Dr. Lower's psychological
3 affecting Tommy Lee Waldrip does not, according to you,
4 affect his ability to understand his situation, to
5 understand his situation as it applies directly to him,
6 and it does not impact his ability to communicate with
7 me or Ms. Watson, correct?

8 A That's correct.

9 Q You have never seen him communicate with an
10 attorney.

11 A That also is correct.

12 Q By the way, are you board certified?

13 A In forensic psychology?

14 Q Yes, sir.

15 A Not yet. I haven't applied.

16 Q Have you taken your APBS board?

17 A No, I haven't applied.

18 Q You've also testified that Mr. Waldrip's
19 looks, manner and demeanor made it perfectly clear to
20 you that he understood what you were talking to him
21 about.

22 A He understood what I was talking about.

23 Q Your words were perfectly clear, weren't
24 they?

25 A That's correct.

1 Q Okay. And when you asked him specifically
2 about the crime, his response was he wasn't there.

3 A That's correct.

4 MR. BRANNON: That's all.

5 THE COURT: Redirect?

6 MR. BRANNON: Judge, one thing, please, sir.

7 BY MR. BRANNON:

8 Q Dr. Storms, if you could just identify these
9 three tests which you did.

10 A This is trail making parts A and B, which is
11 I guess Exhibit 8, the MMPI, and the Weschler Adult
12 Intelligence Scale, I think they're all labeled
13 Exhibit 8.

14 Q Okay.

15 MR. BRANNON: We would move to tender those
16 three exhibits into evidence at this point in time,
17 Judge.

18 THE COURT: Mr. Darragh?

19 MR. DARRAGH: Your Honor, I'll object simply
20 for this reason. Both Dr. Currie and Dr. Storms have
21 testified about these tests, about the results of the
22 tests, about their conclusions concerning them. Both of
23 those -- all of those tests are available as to each of
24 these individuals.

25 To put the tests in front of the jury without

1 also all of the other information in front of the jury
2 would be to overemphasize particular tests as opposed to
3 the overall testimony that was provided, and so
4 therefore I'm going to object to that simply because of
5 the overemphasis that may be placed on particular tests
6 that were given by each of the individuals by Dr.
7 Currie, by Dr. Storms, by anyone else who gave tests.

8 THE COURT: Very well. Defendant's Exhibit 1
9 is admitted.

10 MR. BRANNON: Thank you, Judge.

11 THE COURT: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. DARRAGH:

14 Q Can you draw a distinction in psychological
15 terms between can't and won't?

16 A Yes.

17 Q And what distinction would you draw between
18 those things?

19 A Can't means unable, won't means that they
20 choose not to.

21 Q Okay. Based on your evaluations of Tommy Lee
22 Waldrip, the testing that you gave and the other
23 evaluations that you've testified to, can you testify as
24 -- assume, for example, that an attorney testifies that
25 her client won't give her and her co-counsel information

1 about the crimes for which he is charged. Based on your
2 evaluations of Tommy Lee Waldrip, if that can be
3 accepted, that is that that attorney testified to that,
4 and if it can be accepted that that is, in fact, the
5 case, based on your evaluations of Tommy Lee Waldrip is
6 it a matter for him that he can't or he won't?

7 A It's a matter that he won't.

8 Q If a person has delusions, can you state
9 whether or not those can be compartmentalized to a
10 degree?

11 A Sure, they may or may not have a thing to do
12 with the charges and they may or may not have any -- I
13 mean, they may or may not have any relevance whatsoever
14 to legal proceedings or to the charges against him or
15 anything like that. They can be, you know, one area
16 they're delusional and one area of their life they're
17 fine and all the others.

18 Q If there's any sort of delusion on the part
19 of Mr. Waldrip concerning being monitored, in your
20 opinion based on your evaluations of Mr. Waldrip can you
21 state whether or not that's a compartmentalized thing
22 and whether or not it affects his ability to communicate
23 with his attorney concerning the issues?

24 A It's fairly compartmentalized. It's not
25 unusual for prison inmates, and we deal with many, many

1 prison inmates as well as many, many seriously
2 disordered, mentally disordered people, to have some
3 sort of stress-related, maybe delusions like this, but
4 that doesn't -- I mean, they're -- in one area they're
5 actually fairly, you know, reasonable. He is paranoid
6 about the sheriff's department being against him. Well,
7 he's, I mean, been arrested and sitting in the Dawson
8 County Jail for three years, that's a pretty good
9 indication they probably are.

10 So, I mean, it has -- it's compartmentalized,
11 there's no reason it shouldn't clear up once he's under
12 -- from under this stress, and it really in my opinion
13 doesn't have anything to do with the case against him.

14 MR. DARRAGH: Thank you. No further
15 questions.

16 MR. BRANNON: Could I ask one more question,
17 Judge?

18 RECROSS-EXAMINATION

19 BY MR. BRANNON:

20 Q Which one of the tests gives you the
21 compartmentalization?

22 A Well, Mr. Brannon -- is that your name?

23 Q Yes.

24 A Basically a forensic evaluation is getting as
25 many sources of data and basing your opinion on as many

1 sources of data, cross data sources as possible. For
2 one thing, he, during his clinical interview, aside from
3 talking about these, the monitor, he gave no indication
4 of psychosis.

5 Secondly, his MMPI results give no indication
6 of psychosis.

7 Third, he was too well oriented to reality to
8 be psychotic. So, you know, those three sources taken
9 together give me the idea that he is not -- that he is
10 able to communicate with his attorney.

11 Q As to the compartmentalization concept --

12 A He talks about that --

13 Q May I finish my question, please?

14 A Sure.

15 Q Is there a particular test that can be
16 administered that directly affects that and interprets
17 compartmentalization?

18 A No, I think I answered that, there would be
19 none.

20 MR. BRANNON: Okay, thank you.

21 MR. DARRAGH: That's all I have of him.

22 THE COURT: Excuse this witness, then?

23 MR. DARRAGH: Yes, sir, please.

24 THE COURT: We're going to take a ten-minute
25 break, and Dr. Storms may be excused. Thank you very

1 much.

2 (Short recess).

3 THE COURT: Anything for the record before we
4 bring in the jury?

5 MR. DARRAGH: I don't think so, Judge. I'm
6 going to call Dr. Lower as my next witness.

7 THE COURT: Go ahead and bring him in and
8 then bring the jury in. Go ahead and bring the jury in.

9 (Jury returned to the box).

10 THE COURT: All right, Mr. Darragh, you may
11 proceed.

12 MR. DARRAGH: Thank you, Your Honor.

13 DR. JEROLD STEPHEN LOWER,
14 after being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DARRAGH:

17 Q Sir, would you state your name and your
18 occupation, please?

19 A I am Dr. Jerold Stephen Lower. I am a
20 psychologist, and specifically I'm senior psychologist
21 in the forensic services division at Central State
22 Hospital in Milledgeville.

23 Q You are a lawyer as well, is that true, sir?

24 A Well, I have a degree from law school, but
25 I've never practiced law nor taken the bar exam.

1 that are specific to the legal issues, such as
2 competency for trial and criminal responsibility in
3 terms of, you know, what their understanding is of their
4 legal situation, how well they are aware of it, how well
5 they are aware of the way the criminal justice system
6 functions and the kind of proceedings they have to go
7 through, what their role will be and what the roles of
8 the other people will be and so on.

9 Q Yes, sir. When you used the term, "criminal
10 responsibility," are you talking about a person's mental
11 state at the alleged time of the act charged?

12 A Yes.

13 Q Now, this particular order that came down
14 from Judge Girardeau concerning your evaluation of him
15 that you conducted on June 24th, 1993, were you asked to
16 find criminal responsibility at the time of the act in
17 terms of that particular order?

18 A No, not on that particular order.

19 Q Now, would you describe specifically, in
20 describing the Dawson County Jail, where it was that you
21 met with Tommy Lee Waldrip on June the 24th?

22 A Well, I don't have a really clear picture
23 because I don't ordinarily take notes on that thing.
24 I'm not ordinarily asked about that. But it was like a
25 hallway or anteroom or some sort of space that had other

1 doors to other rooms going off of it. It, as I recall,
2 had some shelves or counters around the sides and there
3 was some office machinery and maybe boxes of things that
4 were being stored in it. It was a fairly large space
5 and neat and clean, an interior room without windows.
6 It was fairly well lighted.

7 Q Did you find anything to be particularly
8 uncomfortable about the room?

9 A No, no more so than the average place that we
10 do these things in.

11 Q Okay. And, sir, can you describe to the best
12 of your recall how much time you spent with Tommy Lee
13 Waldrip on June 24th, 1993?

14 A About, oh, between an hour and fifteen
15 minutes and an hour and a half, I would say.

16 Q Okay. Before beginning your clinical
17 interview with him, can you state whether or not you
18 advised him anything concerning his rights, limits of
19 confidentiality and that sort of thing?

20 A Yes. We have a disclosure form, a set of
21 statements that we give to every defendant before we see
22 them, and I always not only give them to the person to
23 read or read it to the person, if they cannot read, but
24 I also, if the person can read, have them read it aloud
25 and I go over it with them, explain each one of the

1 statements a little bit more fully to try to be sure
2 that they do, in fact, understand the disclosures that
3 are on this form.

4 Q As you talked with him about those things,
5 can you state whether or not there was any indication
6 given to you based on your observations of Tommy Lee
7 Waldrip that he did not understand the rights that you
8 were giving him and the limitations of confidentiality?

9 A No such indication.

10 MR. BRANNON: Your Honor, I'm going to
11 interpose an objection, excuse me, sir. At this point
12 in time I think a foundation needs to be laid about how
13 much time he had spent with Mr. Waldrip prior to making
14 this particular observation, and so we object to it at
15 this point that no foundation has been laid to support
16 that conclusion.

17 THE COURT: Your objection is overruled.
18 You may proceed.

19 MR. DARRAGH: Thank you, Your Honor.

20 BY MR. DARRAGH:

21 Q Now, you then went about conducting a
22 clinical interview, is that correct?

23 A Yes. After -- you know, we were in the
24 process of administering this disclosure, Mr. Waldrip
25 was reluctant to participate and he went to call his

1 attorney and clear it with him, and then we got on to
2 the clinical interview.

3 Q Describe more particularly how that
4 particular thing occurred.

5 A Well, he said that he was not expecting me,
6 didn't know anything about the evaluation, and even
7 though I read him these disclosures he still was --
8 I don't recall his exact words, but was somewhat
9 suspicious about our purpose and my, or my purpose and
10 whether he should participate, and so he asked if he
11 could call his attorney and I, of course, said, "By all
12 means."

13 Q And did he go to do that?

14 A Yes, he did.

15 Q Did he do that in the same room or a
16 different room?

17 A He did that in a different room.

18 Q Okay. Did he return to you?

19 A Yes, he returned to me and we proceeded.

20 Q Okay. Did he tell you what happened as he
21 came back from going to call his attorney?

22 A Well, just simply that his attorney said it
23 was all right to talk to us, but that he was not going
24 to discuss any of the facts of the offense.

25 Q Okay. Did he tell you anything about a

1 letter that had been sent to him?

2 A Yes. He told us that a letter had been sent
3 to him by his attorney but that he had not received it
4 at the time I showed up.

5 Q When you were evaluating him can you state
6 whether or not one of your purposes was to determine
7 whether Tommy Lee Waldrip was capable of understanding
8 the nature and the object of the proceedings against
9 him?

10 A Yes, that's always one of the objects in a
11 competency evaluation.

12 Q Can you state whether or not one of your
13 purposes was to seek to determine whether Tommy Lee
14 Waldrip comprehends his own condition in reference to
15 the proceedings that were against him?

16 A Yes, my answer to that is the same as the
17 last question.

18 Q Can you state whether or not one of your
19 purposes was to seek to determine whether Tommy Lee
20 Waldrip was capable of rendering to counsel assistance
21 in providing a proper defense?

22 A Yes.

23 Q Okay. Can you state based on your
24 evaluation, your experience, your training in conducting
25 such evaluations, can you relate his refusal to talk

1 with you about the facts of the offense, his getting up
2 to call his attorney when he wasn't sure whether he
3 should cooperate with you or not, and after having
4 talked with his attorney coming back and agreeing to
5 cooperate, can you relate those things to any of the
6 issues that you were seeking to find out about as just
7 discussed?

8 A Well, certainly considering the seriousness
9 of the charges that he's facing and the fact that I came
10 unannounced and he didn't know anything about it, I
11 think that was a rational thing for him to do, and it
12 showed comprehension of the role of his attorney and the
13 need for his attorneys' assistance and the fact that he
14 might have some potential for getting himself in
15 trouble, and so in general it would tend to show that he
16 was thinking rationally about his own self-interest
17 there.

18 Q Can you state whether or not you reached any
19 conclusions concerning orientation to time, place,
20 person and situation?

21 A Yes, that was perfect.

22 Q Okay. And would you describe what you mean
23 by orientation to those things?

24 A Well, whether the person knows the date, the
25 place he's in, who he is, who you are and what's going

1 on around him, like in this case the fact that he's in
2 jail awaiting trial and so forth.

3 Q Did you make any findings concerning whether
4 or not he seemed in touch with reality or not in touch
5 with reality?

6 A Yes. I concluded that he was generally in
7 good touch with reality.

8 Q Okay. Can you state the degree of his -- I
9 hope I get this word correct, artic -- well, his ability
10 to articulate, his ability to talk with you clearly and
11 coherently?

12 A Yes, yes, he talked clear, coherent sentences
13 and good English. There were no particular flaws in his
14 logic or anything like this.

15 Q Did he voice to you anything that you noted
16 and made observations about concerning any sorts of
17 delusions?

18 A Yes. He said that there was a monitor in the
19 jail that was aware of not only of everything he said
20 and did, but that could read his thoughts, and that this
21 monitor was causing him to do things that got him in
22 trouble, telling him things to do that got him into
23 trouble and things like that.

24 Q Were you aware that there was a, in fact, a
25 monitoring system at the Dawson County Jail in terms of

1 two-way intercoms between cells and a control room and
2 such as that?

3 A No, I wasn't aware specifically of that,
4 although most jails do have some kind of arrangements
5 like that.

6 Q Okay. Did he describe by whom the monitoring
7 system was in control?

8 A Well, that it was controlled by the jail
9 staff, but he also at one point said it was part of a
10 communist plot and some things like that.

11 Q Okay. Did he report to you any previous
12 mental health care?

13 A The only previous mental health care he
14 reported was that he had seen Susan Kirkland from the
15 Dawson County Mental Health Center one time while he was
16 in jail as a result of being locked down and having some
17 reaction to that.

18 Q To what did you relate these things, if to
19 anything, that he was reporting to you?

20 A Well, I couldn't relate them to too much of
21 anything because he didn't really relate them to much of
22 anything, aside from the statements about making him do
23 bad things, but certainly this kind of idea, this kind
24 of delusion, if you will, tend to be fairly common with
25 people that have been in jail awaiting trial for a time.

1 tests are very valuable tools in some instances, but
2 they are just tools, and I've always been trained that
3 it's the responsibility of the clinician to decide what
4 tests are appropriate, when they're appropriate and when
5 they're not, and so my procedure is to do formal testing
6 only when I have a specific question that I think I need
7 a formal test to answer and I know how that test is
8 going to help me reach that answer, and if I don't have
9 a specific reason for giving a specific test then I
10 don't test.

11 Q In your particular evaluation of Mr. Waldrip,
12 was there anything about his functioning as you were
13 able to talk with him and he was able to articulate, you
14 were able to discuss with him the issues that this jury
15 will be deciding, was there anything about the way you
16 observed him that led you to the conclusion that you
17 wanted some additional testing?

18 A No, there was not.

19 Q When -- let me ask you this: When you
20 evaluated him, can you state whether or not, just a yes
21 or no to this, Tommy Lee Waldrip at the time of your
22 evaluation, whether or not you reached an opinion, this
23 is what I'm asking, whether or not you reached an
24 opinion at the time of your evaluation that Tommy Lee
25 Waldrip was capable of understanding the nature and the

1 object of the proceedings against him?

2 A Yes.

3 Q And what was your opinion about whether he
4 was able to do so?

5 A Yes, that he was.

6 Q Can you state whether or not you reached an
7 opinion based on your conversations in June of 1993
8 whether he comprehended his own condition in reference
9 to the proceedings against him?

10 A Yes.

11 Q And what was your conclusion of that?

12 A Again, my conclusion was that he did
13 understand.

14 Q Can you state whether or not based on your
15 clinical evaluation of him on June the 24th, 1993 that
16 you reached -- whether or not you reached a conclusion
17 that he was capable of -- well, whether or not you
18 reached any conclusions as to whether he was capable of
19 rendering to counsel assistance in providing a proper
20 defense?

21 A Yes.

22 Q And what were your conclusions concerning
23 that issue?

24 A That he was capable of that.

25 Q Now, assume for a moment that an attorney for

1 an individual testifies that he won't tell me the facts
2 of his case. Can you state whether or not based on your
3 observations of Tommy Lee Waldrip you could draw any
4 conclusions as to whether that is a matter of can't or
5 won't for him?

6 A Not based on that bit of information alone.

7 Q Okay. Can you state whether or not you
8 reached any conclusion concerning whether he was able to
9 communicate with his attorneys sufficiently to assist in
10 the preparation of his defense if he so chose?

11 A Yes.

12 Q And what was your conclusion concerning that?

13 A Yes, that he would be capable of it.

14 Q And what did you mean by the phrase that if
15 he so chose, or if he so chooses?

16 A Well, certainly we encounter people that for
17 one reason or another either make false statements to
18 their attorneys or won't talk to them about this or
19 that, for whatever reasons they may have, and I know
20 this happens. And so sometimes I include that phrase,
21 particularly with someone that's not been very open with
22 me about those matters.

23 MR. DARRAGH: No further questions. Your
24 witness.

25 CROSS-EXAMINATION

1 BY MR. BRANNON:

2 Q Do you pronounce your last name Lower or
3 Lower?

4 A Lower.

5 Q Dr. Lower, you gave us a history of your
6 educational background and you're presently, am I right,
7 employed at Central State Hospital in Milledgeville, is
8 that correct?

9 A That's correct.

10 Q And what is that position there?

11 A Senior psychologist.

12 Q All right. And that is a state employment
13 position, am I right?

14 A Yes.

15 Q Okay. So you're paid by the State of
16 Georgia, is that correct?

17 A Yes, I am.

18 Q Okay. And prior to going to the Central
19 State Hospital in Milledgeville you were employed by the
20 Georgia Mental Health Institute.

21 A That is correct.

22 Q How long were you there?

23 A About six years, six and a half.

24 Q That's also a state employment position,
25 is it not?

1 to have his lawyer present.

2 Q Okay. You said Tommy was somewhat
3 suspicious, but you didn't find anything unusual about
4 that, did you?

5 A No. A lot of defendants are suspicious of
6 us.

7 Q Yes, sir. And did you know when you went to
8 visit him that he had been held at the Dawson County
9 Jail without ever going outside and for long periods of
10 isolation for some years, not weeks or months? Were you
11 aware of that?

12 A Yes, he told me he'd been there for some
13 twenty-six months, and he did complain about the
14 isolation.

15 Q Did you ever see the size of the cell he was
16 in?

17 A No.

18 Q You did?

19 A I don't remember specifically whether he
20 complained about the size of the cell.

21 Q Did you see it?

22 A No.

23 Q You concluded in your report in that hour and
24 a half interview that he was in good touch with reality.

25 A Yes.

1 Q As a matter of fact, you concluded that in
2 the first six or seven minutes, or you wouldn't have had
3 him sign the waiver, would you?

4 A We always do that beforehand so that the
5 person is on notice about what the situation is. There
6 have been instances where after conducting the interview
7 I've had my doubts about whether the person really did,
8 in fact, understand that document, and when I have had
9 such doubts I've always mentioned that in my report.

10 Q And in this report you state that he --
11 voiced, after you say he's in good touch with reality,
12 on the next line you say, "However, he voiced a number
13 of rather florid delusions." Do you recall that?

14 A Yes.

15 Q Not illusions or illustrations, but
16 delusions, that's the word you used in your report,
17 isn't it?

18 A Yes.

19 Q He told you that he thought there was a
20 monitor that was able to read his thoughts.

21 A Yes.

22 Q Correct? As a matter of fact, he told you
23 quite a few bizarre things about that, didn't he?

24 A Yes.

25 Q He told you about walls closing in on him,

1 correct?

2 A Yes, he said that, that was one of the
3 symptoms that caused him to go see Susan Kirkland, and
4 it was clear to me from the context he meant that he had
5 experienced it at that time but that he was not
6 currently experiencing that.

7 Q Okay. And he told you that patches of hair
8 were missing on his body and that there were places of
9 skin where radiation had somehow burned him because this
10 system is run on radiation, correct?

11 A Yes.

12 Q Now, when you were telling the jury what he
13 told you and you were looking at some notes, it's a fact
14 as you have testified that you don't have his verbatim
15 responses that he gave you, nor do you recall them over
16 a year later, do you?

17 A No.

18 Q Okay. So what you're really reading to the
19 jury is your shorthand, what you wrote down, correct?

20 A Yes.

21 Q All right. And it's your conclusion that the
22 best thing you can do is a good interview, and if you
23 get a good interview you feel no need for any follow-up
24 intelligence testing or function testing, emotion
25 testing, anything like that?

1 A No, that's not quite what I said or what
2 meant to say. What I said, I believe, was that
3 depending on what the interview discloses that testing
4 may or may not be necessary.

5 Q Well, you said you've always thought that the
6 best thing is a good interview.

7 A Yes, yes.

8 Q Did I hear you right?

9 A Yes, yes, I did say that and I'll stick to
10 that.

11 Q All right, sir. And as a matter of fact,
12 that's what you decided in this case, a good interview
13 was good enough.

14 A Yes.

15 Q Okay. Even with Mr. Waldrip relating these
16 delusions to you, you felt like that was enough.

17 A Yes.

18 Q Do you know why they would have come back
19 over a year later and done another one where they added
20 testing to the psychological?

21 MR. DARRAGH: Objection, that sounds
22 argumentative to me, Your Honor.

23 THE COURT: If he knows the answer he can
24 give it, if he doesn't -- I'll allow it.

25 BY MR. BRANNON:

1 Q Do you know?

2 A The only thing I know is that Dr. Kugler told
3 me they were requested to do another one.

4 Q Okay.

5 MR. BRANNON: Thank you, sir, that's all,
6 Judge.

7 REDIRECT EXAMINATION

8 BY MR. DARRAGH:

9 Q Requested to do another evaluation?

10 A Another evaluation, that's right.

11 Q But not that they were requested to do any
12 particular tests or not any particular tests.

13 A No, just that they were requested to do
14 another evaluation.

15 MR. DARRAGH: No further questions.

16 THE COURT: Very well. We'll excuse
17 Dr. Lower and we'll take our noon recess at this point.
18 Remember your precautionary instructions, we'll be in
19 recess until 1:00 o'clock.

20 (Noon recess).

21 THE COURT: Anything for the record before we
22 proceed?

23 MR. DARRAGH: I don't believe so, Your Honor.
24 Dr. Kugler is going to be my next witness.

25 THE COURT: Very well, Ms. Pittman may bring

1 in the jury, and --

2 MR. BRANNON: Your Honor, could I raise one
3 issue?

4 THE COURT: Just a moment, Ms. Pittman.
5 We'll have to extend that delay from 30 seconds to about
6 a minute. All right.

7 MR. BRANNON: I would like to interpose an
8 objection of Dr. Kugler's coming. I know nothing that
9 he can add. He was a co-evaluator on the test and
10 evaluation of Dr. Storms, which we've been through at
11 length, both on direct and cross-examination, and he was
12 present and I'm assuming that we'll be going over the
13 same materials, and so I object to that as being
14 cumulative and repetitive and slowing down the trial
15 process, and that's my objection.

16 THE COURT: Very well.

17 MR. DARRAGH: If I need to respond I will,
18 Your Honor.

19 THE COURT: Very briefly.

20 MR. DARRAGH: He is an expert who also
21 evaluated. Even though they may have been looking at
22 some of the --

23 THE COURT: Very well, very well. He may
24 testify. Ms. Pittman, you may bring the jury in.

25 (Jury returned to the box).

1 county jail where he is currently located, that these
2 monitors basically have some ability to communicate with
3 him or to try to influence his thoughts.

4 It was interesting, he always said they tried
5 to influence his thoughts, and that in addition to these
6 monitors there may be radiation coming from them that he
7 feels is causing him some damage, i.e. especially to his
8 facial hair. He indicated he had wondered about damage
9 to the heart but then went on to say he had been to
10 doctors, they told him his heart was all right.

11 He also believes that there are speakers,
12 phones or some manner where the jail personnel, jail
13 staff, those people that are in the jail, he hears
14 messages, quote, from them.

15 Q Are you commenting that he does, in fact,
16 believe those things or that he was reporting to believe
17 those things?

18 A Well, he was reporting to believe those
19 things. These things which are a mixture that he's
20 talking about of delusions and hallucinations, there is
21 no clearcut test that one can say yes, this person
22 believes this or yes, this person is probably hearing
23 these voices or sounds that don't exist.

24 There are usually, when an individual --
25 almost always when an individual is having these kinds

1 of symptoms, certain other signs and symptoms present.
2 We didn't see any of those. Usually an individual
3 having these has some trouble with attention span, in
4 paying attention to you, in staying with a conversation.
5 Very often their affect, which is a way of saying facial
6 expression or mood, is strange, it's either -- appears
7 to be frightened, it appears at the time to be highly
8 anxious, appears to be flat, that is show little or no
9 emotion. The individual will often ramble on subjects
10 when these things are there. They often appear to be
11 listening if they are hearing these things, and that's
12 one reason why you have difficulty carrying on this very
13 coherent and rational conversation.

14 We did not see any of those things.
15 Certainly it raises some index of suspicion whether they
16 exist or not, but again there is no way, since our
17 profession as a whole has to depend somewhat upon the
18 individual reporting these things, it is the only way of
19 our knowing about them for sure.

20 Now, we have some other things that we can
21 corroborate with an individual who is having these kinds
22 of things. They usually have a pretty significantly
23 elevated score on one of the psychological tests, i.e.
24 the MMPI-II, which is the one that we gave, Dr. Storms
25 actually administered. There was no elevation there to

1 lead us to believe these sort of things exist.

2 So I'm not going to sit here and say no,
3 he doesn't believe any of this, that this is all
4 malingering. But I don't see how, based upon the
5 findings and the lack of findings, that anyone can say
6 hey, they really do exist, either.

7 Q All right, sir. To what extent can you
8 associate stress, if you can, of incarceration to any of
9 the things that he reported?

10 A Well, stress does -- can play strange games
11 on people and do strange things to people. Certainly it
12 is not uncommon for us to see individuals who have been
13 incarcerated, especially in county jails where
14 confinement is rather limited and this kind of thing, to
15 become suspicious and to develop idiosyncratic or
16 specific strange ideas about their given situation which
17 usually clears up when they're no longer in that type of
18 environment, and especially if they have serious legal
19 charges against them at the time.

20 Q All right, sir. Though these reports were
21 being made to you by Mr. Waldrip, can you state whether
22 or not based on your evaluation of him that there was
23 any indication to you of a serious mental illness being
24 present in Tommy Lee Waldrip?

25 A Well, serious mental illness in the sense of

1 causing him gross dysfunction in his ability to carry
2 on, to communicate, to behave logically, use good
3 judgment in the sense of the situation that he is in,
4 no, none of those things were present. He didn't show
5 any symptoms except the fact that he volunteered on his
6 own to tell us about these things which he was thinking,
7 feeling, hearing and sensing, so to speak.

8 Q Okay. Did you find him to be psychotic?

9 A I don't think he's psychotic.

10 Q And on what would you base that opinion?

11 A I would base it on the overall evaluation,
12 the testing that Dr. Storms did, and then we looked at
13 and evaluated, the man's ability, as I say, to be
14 rational, coherent, used good judgment in protecting
15 himself in his own defense, the fact that he could pay
16 attention, he didn't stare off into space, he had none
17 of these ancillary symptoms which we often see with a
18 psychotic individual, so we could find no real evidence
19 of psychosis.

20 Certainly there are other kinds of psychosis
21 one can have, there are two or three or four kinds.
22 Schizophrenia, usually a disease of youth, the man gave
23 no significant past history of a mental illness. At his
24 age if he'd had schizophrenia you would have expected
25 some obvious signs of deterioration to be present.

1 He was not manic. That particular type of
2 psychosis, a person is going to be hypoverbal, there are
3 going to be flight of ideas, they're going to be
4 restless, jumping around all over the place. There was
5 no evidence that he had depression to the extent that he
6 was psychotically depressed and no evidence that there
7 was any type of organic psychosis present, so we could
8 find no evidence for his being psychotic.

9 Q Yes, sir. Was there -- let me go ahead and
10 ask this question. Were you charged in the order that
11 you received to also seek to determine his criminal
12 responsibility at the time of the act, the acts that
13 were alleged in what he was charged with, even though
14 that's not an issue for this jury, were you charged with
15 seeking to try to find out that?

16 A That was part of the court order, yes.

17 Q In doing so, can you testify as to whether or
18 not you would seek to ask a person charged with a
19 criminal case, as Mr. Waldrip was and is, about his
20 version of the facts of the situation?

21 MR. BRANNON: Judge --

22 MR. DARRAGH: I'm just asking yes or no at
23 this time, I'm not asking to go into substance.

24 BY MR. DARRAGH:

25 Q Well, let me just ask you a yes-or-no at this

1 time. Is it, sir, something that you seek to do to try
2 to talk to somebody about the alleged facts of their
3 situation, of the crimes with which they're charged?

4 A Yes, I think it's part of your responsibility
5 evaluation, you certainly would like to hear what the
6 person has to say about his own life surrounding that
7 event and any statements that he might want to give you
8 in relation to that, try to ascertain if there was
9 anything going on with him at that time that was
10 different, et cetera. That would be part of that
11 responsibility evaluation.

12 Q Stop right there for a moment. Just a yes or
13 no on this and that's all I'm looking for, just a yes or
14 no. Did you ask him to discuss his case with you, that
15 is, the facts of this case with you?

16 A I think more than asking him, because first
17 of all we read the individual his rights and tell them
18 that they don't have to answer any questions about their
19 case. Certainly we give them this opportunity. So the
20 answer I think would be yes to the question that you are
21 posing.

22 Q Did he decline to or agree to discuss the
23 facts of his case?

24 A He refused to discuss anything related to
25 this case and was very clear about that.

1 Q How can you, if you can, relate that refusal
2 to talk about the facts of the alleged crime to any
3 issues that this jury will be concerned with about
4 competency to stand trial?

5 A I don't think I would like to equate the two.
6 I think they're two separate issues. There are specific
7 standards for those things which are related to an
8 individual being competent to stand trial. These things
9 are basically does the person understand what he's
10 charged with, does he know what the charges are, does he
11 understand what can happen to him, that he could be
12 found guilty, innocent, et cetera, does he have some
13 rudimentary knowledge of how the criminal justice system
14 works, in other words what's the judge and the jury and
15 witnesses and the prosecuting and defense attorney
16 trying to do during this thing, and what are the logical
17 sequences that can happen if he is found guilty or
18 innocent or these kinds of things, what should happen in
19 the courtroom in the sense of his ability, i.e. one of
20 the standard questions, if someone is on the stand lying
21 about your case or whatever, what should you do, the
22 right answer is tell my lawyer about it. Well, that's
23 certainly the right answer.

24 The final thing is can he communicate with
25 his attorney in his defense, and certainly if he can

1 communicate in a logical manner with the examiner it
2 stands to reason he can communicate with his attorney in
3 the preparation of his defense.

4 Criminal responsibility has to do with does
5 the person understand that if he did such a crime,
6 whatever it is he's charged with, is it wrong, would it
7 be wrong to do that, were there any sort of reasons that
8 you can give us that might lead into evidence of a
9 significant mental disease causing it, et cetera. So
10 they're very different standards, and I don't know how
11 you can say one --

12 Q All right. And I guess my question may have
13 been misunderstood, so let me try to make it more
14 succinct. Even though this jury won't be deciding that
15 issue, that is criminal responsibility at the time of
16 the act, how does his refusal to talk with you about
17 that relate to his understanding of the nature and
18 objects of the proceedings against him, relate to
19 whether he's capable of rendering counsel assistance and
20 providing a proper defense, et cetera?

21 A It can have a great deal to do with his
22 understanding of the proceedings and the ramifications
23 of being found guilty in this kinds of thing, if that's
24 sort of what you're asking.

25 Q It has a what? I'm sorry, I didn't hear the

1 answer, and so I do object to it. I think that question
2 is out of bounds.

3 THE COURT: The objection is overruled.

4 BY MR. DARRAGH:

5 Q I want to try to make my question clear, sir.
6 If a person understands or is capable of rendering to
7 his counsel assistance in preparing a proper defense --

8 A Okay.

9 Q Okay, and if, for example, he has on some
10 occasions or at least one occasion, taking a
11 hypothetical here, been advised not to talk about the
12 facts of his case with other individuals, how would his
13 refusal to talk about the facts of this case to you
14 relate to his capability of rendering effective
15 assistance to his counsel?

16 A Well, it would generally tell me he's
17 following the advice of his counsel, but it's very
18 common for folks who are being evaluated not to want to
19 tell us anything about their case, because they
20 understand that this is not truly a confidential thing
21 and if the Court so requires us we can bring it out.
22 But to me, I think to answer your question, certainly
23 it's one good indicator that he can cooperate with his
24 counsel and follow instructions.

25 Q Thank you, sir.

1 Can you comment -- assume for the purpose of
2 argument that the things that Tommy Waldrip talks about
3 concerning monitoring and all of those things that he
4 related to you represent some sort of delusions. Can
5 you comment on whether or not those things can be
6 compartmentalized and be separate and apart from the
7 issues which this jury is to determine?

8 A Yes, I think that's the very answer. To me
9 the key issue is not whether he believes that he may be
10 being monitored or that these monitors are saying things
11 to him to get him to confess or that he hears the voices
12 of the sheriff or deputies or this kinds of thing.
13 What does this have to do with the key standards of
14 competency? So that an individual can, indeed, have
15 some degree of mental illness, i.e. delusions primarily
16 in this case, and it doesn't really affect his
17 competency as long as he fulfills the basic standards.
18 That's why to me it is not a great issue of whether or
19 not he does believe these things.

20 I think frankly it's going to be impossible
21 -- I've done this for 34 years -- he may believe some of
22 this, but I don't believe it interferes with his
23 competency to stand trial.

24 Q Psychiatrically speaking, sir, is there a
25 difference between a person -- is there a difference

1 between can't communicate and won't communicate?

2 A Absolutely.

3 Q And how so?

4 A Well, I think that you could take this about
5 anything in life, you know. Many times my children
6 could do what I ask them but they wouldn't do what I
7 asked them, and so a person who can't communicate is
8 probably suffering from something, i.e. we're talking
9 about mental disorders here, so that he couldn't
10 communicate with his attorneys, since that's the subject
11 we're on. Won't simply means the person chooses not to,
12 for whatever his reason, good or bad.

13 Q Okay. In evaluating Tommy Lee Waldrip in
14 particular, sir, can you comment on, again assuming for
15 the purpose of argument that he won't tell his attorney
16 about the facts of this case, just assuming that for the
17 purpose of argument, in reference to Tommy Lee Waldrip
18 would your opinion be that that is a matter of can't
19 tell them or won't tell them?

20 A Well, I think based upon the interview that
21 we did in our evaluation, he has the ability to tell his
22 attorney things that occurred if he so chooses. I might
23 point out that in my twenty or so years of doing this,
24 many times a defendant chooses not to tell his attorney
25 certain facts of the case or many times the attorney

1 competent when a forensic evaluation is requested by the
2 Court. So the answer is that about 4 or 5 percent of
3 the people that I see when I see them are not competent
4 to stand trial at the time of the evaluation, since
5 competency is a here-and-now thing.

6 Q So in the evaluations you've done, 90
7 something percent of the people have been competent to
8 stand trial at the time you did the evaluation.

9 A That is correct.

10 Q Thank you. Since you co-authored the report
11 of August the 19th, 1994 with Dr. Storms, then I assume
12 you agree with the report and what's in it.

13 A Yes.

14 Q And you were a part of the development and
15 publication of this report.

16 A That is correct.

17 Q All right. And I believe we've already
18 tendered into evidence three tests, an MMPI, a trail
19 making part A and B --

20 A Yes .

21 Q -- and a Weschler Adult, and those were the
22 three tests which were given to Dr. Waldrip by yourself
23 -- Dr. Waldrip, excuse me, Tommy Lee Waldrip by yourself
24 and Dr. Storms.

25 A That is correct.

1 Q Therefore would I be correct to assume that
2 you agree with Dr. Storms that no other testing was
3 relevant to Tommy Lee Waldrip?

4 A I don't think any more tests were necessary.
5 One can do tests forever, since the number now goes into
6 the dozens. These are certainly the most commonly used
7 tests. One tests the individual's intelligence, the
8 other one is one of the most standard, most widely used
9 personality tests, and the third one is the most widely
10 used currently screening test for ruling out the
11 possibility of any organic brain syndrome. The trails
12 test and the Bender make up about 90 percent, I believe,
13 of the usage of a screening test to rule out organicity.

14 Q Was he given the Bender test?

15 A He did not.

16 Q I didn't see it.

17 A No, I say one or the other is generally used,
18 those two probably are used 90 percent of the time, not
19 together but one or the other.

20 Q All right. And there were times during the
21 testing and evaluation of Mr. Waldrip that you were not
22 present with Dr. Storms, I understand?

23 A There was probably a period of roughly one
24 hour, give or take a few minutes, when he was actually
25 administering the Weschler and the MMPI when I was not

1 in the room, yes.

2 Q All right. And on this occasion when you all
3 did the August 19, 1994 interview with Tommy Waldrip, it
4 was decided at this time at least three tests ought to
5 be given, rather than just a personal interview,
6 correct?

7 A That's correct. We just think in cases where
8 there are potentially serious charges existing, we
9 usually do this more or less as a matter of routine.

10 Q Okay. And throughout any meetings with Tommy
11 Lee Waldrip, both by Jerold Lower and by yourself and
12 Dr. Storms, he has been able to be in contact with time,
13 place, where he was, and carry on to some degree a
14 normal conversation with you, can't he?

15 A I can't speak for -- you put Dr. Lower in
16 there. I can't speak for Dr. Lower, I can speak for
17 Dr. Storms and myself since we were there almost the
18 same time, and the answer is yes, during those periods
19 of time he was coherent, he was logical, his
20 conversation that we talked about was very relevant to
21 his current situation.

22 Q And your testimony is that he is in contact
23 with reality, even though all these matters that he
24 related to you about the monitor and radiation and hair
25 falling out and burned places, even in the face of all

1 whether he would be comfortable with that or not.

2 BY MR. BRANNON:

3 Q You're comfortable with the fact based on
4 your testimony, then, that Tommy Lee Waldrip is
5 communicating with me, so apparently I have the tools
6 I need to defend him. Are you comfortable with that?

7 A I don't know whether he's communicating with
8 you or not. I said I thought he had the ability to.
9 I don't know what he tells you.

10 Q Yes, sir. If you were the lawyer and he was
11 your client and he was telling you these things, would
12 you be comfortable with defending him in a murder case?

13 A I would give --

14 MR. DARRAGH: Objection, objection --

15 THE COURT: Sustained.

16 A I would give --

17 THE COURT: Sustained. That means you don't
18 answer the question, Doctor, thank you, sustained.

19 THE WITNESS: Oh, okay.

20 BY MR. BRANNON:

21 Q Your conclusion is the same as Dr. Storms'
22 that all this is based on stress.

23 A I think being in a county jail for -- since
24 1991 and having potentially very serious criminal
25 charges is a very stressful thing, and having evaluated

1 several hundred people in this same situation I find
2 that most of them are under stress.

3 Q Did you find him to have any delusions,
4 Dr. Kugler?

5 A He talked about that these beliefs, that, you
6 know, they were -- voices were trying to get -- you
7 know, hearing is one thing, but trying to get him to
8 confess and other things, so he reports things which are
9 delusions.

10 Again, what I have said is that I don't know
11 anybody who could sit there and say and say yes, he has
12 delusions. But at the same time, these are always in
13 the context of his telling you in relation to what he
14 feels like are his problems and not in relation to his
15 understanding the charges, being able to communicate,
16 understanding the role of the judge and jury, et cetera.

17 Q You're co-author of the August '94
18 therapeutic -- not therapeutic report, but psychological
19 evaluation, states that he may have a delusional
20 disorder of some type. Do you agree or disagree with
21 Dr. Storms?

22 A I agree he may have a delusional disorder of
23 some type.

24 Q All right.

25 A But I think, you know, each one of those

1 words stands by themselves. Certainly we see people
2 where there are enough of the ancillary symptoms to say
3 we believe that they do. In this case what we said was
4 he may have, because the ancillary symptoms aren't
5 there. Only his statements that these are the things
6 that he's hearing and -- hearing and feeling.

7 Q The truth of the matter would be that based
8 on your evaluation and what you told the jury today that
9 we don't really know if he's capable of communicating
10 with myself and Ms. Watson and we don't really know if
11 he understands, not superficially, but at a substantive
12 level what's going on in the courtroom, do we?

13 MR. DARRAGH: And I'll object to the latter
14 question. Number one, it was compound, number two --

15 THE COURT: Break it up.

16 MR. DARRAGH: -- the legal standard doesn't
17 have anything to do with superficial or not.

18 THE COURT: Just break it up, Mr. Brannon.

19 BY MR. BRANNON:

20 Q Would you agree with Mr. Darragh that if he
21 views things from a superficial standpoint that that
22 doesn't have any bearing on the standard?

23 A I'm not sure I know what you mean. I mean,
24 work with it again.

25 THE COURT: Let's don't go that way,

1 very much.

2 We've run a little more than an hour, I
3 suppose we ought to take a break at this point. We're
4 in recess for ten minutes.

5 (Short recess).

6 THE COURT: Anything for the record before we
7 proceed?

8 MR. DARRAGH: Well, I'll advise the Court the
9 State intends to rest presently.

10 THE COURT: Very well. Let me ask informally
11 while the jury is out, would the defendant have any
12 rebuttal?

13 MR. BRANNON: I do need just a minute to talk
14 to Ms. Watson.

15 THE COURT: All right. Go ahead, take a
16 minute.

17 MR. BRANNON: Okay.

18 (Short pause).

19 MR. DARRAGH: Your Honor, may Mr. Pulliam and
20 I approach the bench?

21 THE COURT: Sure.

22 (Recorded bench conference).

23 THE COURT: Yes.

24 MR. DARRAGH: Judge, I just wanted to report
25 that Mr. Pulliam and I were in the restroom together and

1 there was a juror present at the time and Don simply
2 made the comment, "Looks like we might finish up today,
3 Lee," and I said, "Well, looks like it," and I said, "I
4 think there's a gentleman nearby that may be a juror,"
5 and the juror responded, "Yes," and we didn't have any
6 further conversation, didn't talk about the case. But
7 just out of an abundance of caution I feel like any
8 juror contact at all I ought to tell you about, and I'm
9 not raising any issues concerning it and I don't think
10 Mr. Pulliam is either.

11 MR. PULLIAM: I agree. I think that's what
12 was said.

13 THE COURT: Very well. And I think the
14 record has identified Mr. Pulliam as being associated
15 with the defendant.

16 MR. PULLIAM: Yes, sir, I believe so.

17 THE COURT: And assisting counsel for the
18 defendant in this case. I think that was on the front
19 end. Very well. Thank you for reporting it.

20 MR. DARRAGH: Thank you, Judge.

21 (Bench conference concluded).

22 MS. WATSON: Your Honor, could we possibly go
23 into a room and talk with our client for five minutes?

24 THE COURT: You can, but the question is do
25 you have any rebuttal evidence?

1 MS. WATSON: That's the discussion.

2 THE COURT: Very well, I'll give you five
3 more minutes. I'm just going to remain in place.

4 MS. WATSON: Okay, thank you.

5 (Short recess).

6 MR. BRANNON: May we approach the bench,
7 Judge?

8 THE COURT: Yes, sir.

9 (Recorded bench conference).

10 MR. BRANNON: Ms. Watson and I are in a
11 position where we have a client that's insistent that he
12 go to the stand, and he has been so throughout the
13 proceedings, and, of course, my advice is against it
14 because I don't have an idea whatsoever as what the
15 person may or may not say when he gets to the witness
16 stand.

17 Since we're both in the dark we do not wish
18 for him to go up, no matter what, and so now his last
19 opportunity has arrived and he wants to go to the stand.
20 And to tell you the truth, we feel kinds of entrapped
21 and we need to spend a few minutes with him just the
22 three of us to see if we can resolve this issue that
23 I want the record to reflect that my advice and Anne's
24 advice has been and continues to be that he should not
25 do this because he does not communicate with us, so

1 therefore we do not know what will happen if he goes to
2 the witness stand, and I want to put that on the record
3 because I'm not sure what's going to happen.

4 THE COURT: Well, I'm sure the record will
5 reflect this is a bench conference and the defendant is
6 not standing here, and that's fine at this point. But
7 why don't you go out, why don't you talk with him, why
8 don't you come back in, make your announcement as to
9 whether or not you'll have any rebuttal evidence at that
10 point.

11 If your client decides not to follow your
12 advise and wants to testify in rebuttal then I would
13 like for you to state on the record in his presence
14 where he can hear it what the -- outside of the presence
15 of the jury but on the record in his presence where he
16 can hear it what your advice is to him on that issue,
17 and let me determine from him whether or not he agrees
18 with that or whether he wants to take the stand and
19 testify.

20 Now, if he does testify I'm going to have to
21 limit the testimony to rebuttal testimony, and I know
22 that given what you've said that you've experienced that
23 you may not have full control of that, but in any event,
24 he's going to have to follow the general parameters of
25 offering rebuttal testimony if he does testify.

1 So why don't you all go out for a few minutes
2 and talk with him and further advise him and then report
3 to the Court as to what the decision is.

4 MR. DARRAGH: And I'll state briefly that I
5 certainly agree with the Court about rebuttal testimony.
6 I anticipate, though, that he may try to go further than
7 that, and therefore I'll object to him being called to
8 the stand at this point, because Mr. Waldrip may try to
9 go further than rebuttal testimony. So I'll leave it at
10 that.

11 THE COURT: All right. Why don't you all
12 talk with him and then report back.

13 (Bench conference concluded).

14 (Short recess).

15 THE COURT: Mr. Brannon, it's been about a
16 half an hour. I certainly don't want to rush you, but
17 we're going to have to move forward with the trial one
18 way or the other, and the decision is whether or not the
19 defendant will have evidence to offer in rebuttal.

20 MR. BRANNON: Judge, the defendant, Mr.
21 Waldrip, wishes to testify in rebuttal. As his counsel
22 it's against my wishes, and I've told him that. He
23 still wishes to testify. I am not aware of what the
24 substance of the testimony will end up being, but that's
25 the position that Ms. Watson and I are in at this point

1 in time.

2 THE COURT: Very well.

3 Mr. Waldrip, you can testify in this matter
4 if you choose to do so. If you do testify it will be
5 under oath and you'll be subject to being questioned by
6 the district attorney or by Mr. Darragh, the chief
7 assistant district attorney. Anything that you say in
8 that testimony could be used against you and would be
9 used against you if it helped the State's case.

10 Mr. Brannon has informed the Court that he
11 and Mrs. Watson have advised you as your lawyers not to
12 testify in this proceeding, and that's advice that you
13 can either choose to accept or not accept.

14 Do you wish to testify in rebuttal?

15 THE DEFENDANT: Yes.

16 THE COURT: Very well.

17 Ms. Pittman, you may bring in the jury.

18 (Jury returned to the box).

19 THE COURT: Mr. Darragh.

20 MR. DARRAGH: Your Honor, the State rests its
21 case.

22 THE COURT: The State rests its case, Ladies
23 and Gentlemen.

24 Will the defense have rebuttal?

25 MS. WATSON: Your Honor, we will have

1 rebuttal, and we'll call Mr. Waldrip to the stand.

2 THE COURT: Very well. Mr. Waldrip, will you
3 step up, please?

4 TOMMY LEE WALDRIP,
5 after being first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WATSON:

8 Q Would you state your name, please?

9 A Tommy Lee Waldrip.

10 Q Where are you currently residing,
11 Mr. Waldrip?

12 A At Dawson County at the detention center.

13 Q How long have you been there?

14 A I believe it was April the 17th, 1991.

15 Q How large is the cell where you're staying?

16 A It's probably about five by ten, five foot by
17 ten foot.

18 Q Are you allowed to go outside?

19 MR. DARRAGH: Your Honor, I will object to
20 the testimony because it's cumulative of other
21 testimony, it's not rebuttal evidence, and this is
22 rebuttal, after all, it's not an opportunity to present
23 direct evidence, which was before --

24 THE COURT: Very well. I understand your
25 objection. I'll allow it over objection.

1 A No, ma'am.

2 Q Why is that?

3 A Well, I cannot communicate with my attorneys.
4 Only thing it would do is just prolong it for another
5 what, six months. It's hard people to comprehend, to
6 understand the pressure I've been under. I've had three
7 doctors that got up here and they gave their testimony
8 of what they feel and these other different things. But
9 I've been under something that I have that I never have
10 experienced in my life, something I have fought all my
11 life against, and there I am right in the midst of
12 something that's the most cruelest thing that's ever
13 happened in my life to be under this type of monitor
14 that reads my thought and my actions.

15 Q Will you tell the jury what this monitor is
16 and how it reads your thoughts?

17 A I'd like to look at my notes. The first
18 thing that it does is messes up your memory. It's hard
19 for people to comprehend other people will do something
20 like something like this, but it's happened to me.

21 I would first of all, if it would be all
22 right with the judge, I'd like to give a copy to each
23 one of the
24 jurors --

25 THE COURT: Mr. Waldrip, if you would just

1 respond to the question that was asked you. What was
2 the question, Ms. Watson?

3 BY MS. WATSON:

4 Q If you would just describe, Mr. Waldrip, what
5 the monitor is.

6 A The monitor is a device that I feel, it
7 monitors my thoughts and my actions. All right, I'll
8 try to explain it to you because it's very hard. At all
9 times, twenty-four hours a day, seven days a week
10 there's someone on the monitor. All right. Anything
11 that I bring out, for example if I wanted to think about
12 this jury, how nice they look or what have you, they
13 could have a comment back through my thoughts because
14 that I can hear them talking to me.

15 I know it sounds kinds of weird, but the very
16 same thing that has happened to me since '91, it started
17 about a -- my memory, I can't remember everything, but
18 it's around June of '91 when it started, and finally it
19 has more of an illustration about what the monitor is
20 all about come out in Newsweek this year of May, it's
21 about the computer as the mind reader.

22 MR. DARRAGH: Your Honor, I'm going to object
23 to the testimony again.

24 THE COURT: Counsel approach the bench,
25 please.

1 (Recorded bench conference).

2 THE COURT: Mr. Darragh, I'm going to allow
3 it because if he sounds bizarre, he sounds looney, I
4 mean, that goes to the issue we're dealing with.

5 MR. DARRAGH: Yes, sir.

6 THE COURT: And I mean the more looney it
7 gets the more relevant almost it becomes.

8 MR. DARRAGH: But that testimony -- you know,
9 they presented their case first. This is a choice that
10 they could have discussed with him and he could have
11 made a decision about when it was still time to present
12 their case.

13 THE COURT: I'm going to allow it. You don't
14 need to argue it.

15 MR. BRANNON: Thank you, Your Honor.

16 (Recorded bench conference concluded).

17 BY MS. WATSON:

18 Q What is that article you were describing?

19 A All right. It come out in Newsweek of this
20 year, the title of it is Computer as Mind Reader. I
21 have some copies here that I was wanting to hand to the
22 DA as well as the jurors. It's hard for me to explain
23 this, but this article here can explain it a little bit
24 better than I can.

25 Q Do you want the jury to see this article?

1 A I'd like for them just to have it.

2 THE COURT: Ms. Watson, no.

3 A If it's permissible. It's not permissible,
4 okay, fine.

5 BY MS. WATSON:

6 Q Does that article have anything to do with
7 the monitor you're under in -- are you under it now?

8 A Yes, ma'am.

9 Q Does that article have anything to do with
10 the monitor that you're being exposed to?

11 A This is just the ways that it operates,
12 through your nervous system, through these type of brain
13 waves and et cetera, and it is a -- comes out on a
14 computer screen, and it is not just something, you know,
15 that on, oh, you know, some people maybe can't believe
16 in the future a computer type of deals, but it's already
17 here.

18 Q Mr. Waldrip, what voices do you hear?

19 A It's different people that work at the jail,
20 Randy Chester, Maynard Waters, Henry George, Ann Martin,
21 Kevin Tanner, John Anderson, and I don't know all the
22 lady's name that works the front office, but they're on
23 the computer.

24 It's generally one woman and one man that
25 operates it. They have a lot of little bitty tapes that

1 A Sure.

2 Q How does the monitor enter your brain?

3 A I feel that it comes through brain waves.

4 The reason why I say that is because I can put earplugs
5 in my ears and I can still hear it, so it would have to
6 come through brain waves.

7 Q Are there any ways that you can stop it that
8 you've learned?

9 A No, ma'am, there's no way that you can stop
10 it.

11 Q Is the monitor on you now?

12 A Yes, ma'am.

13 Q Does it follow you?

14 A Anywhere I go, it's there.

15 Q You were taken to GMHI for examination, you
16 were taken to Mr. Brannon's office for testing. Did the
17 monitor follow you there?

18 A Yes, ma'am.

19 Q Is that why you don't want to delay the
20 trial?

21 A Yes, ma'am, that is the reason why I do not
22 want to delay the trial, for the simple fact I cannot --
23 I'm just deteriorating, and I've got to -- I'm looking
24 forward to the trial.

25 Q Will the trial end the monitor?

1 A Yes, ma'am, I'm sure it will.

2 Q Since June of '91 have you been able to talk
3 to me and to Mr. Brannon about your case?

4 A I've tried to communicate with you and
5 Mr. Brannon, I've tried, but this has blocked our
6 communications because what I think, to have a private
7 session with you, I can't do it because I'm monitored
8 right when we're there talking, and I can't be
9 open-minded or anything with you.

10 Q Has the monitor damaged you at all?

11 A Yes, ma'am, it has damaged me. It has
12 damaged me. Right now my forehead and my eyes, I have
13 to wash them out continuously. My nerves are shot.
14 I have no feelings. I wish I could, I wish I could
15 describe. I wish I could -- my memory is going to --

16 Q I'm sorry, I interrupted you, but what took
17 your feelings away?

18 A I don't know exactly how to explain it, but
19 it's just a constantly slandering my family, threatening
20 to kill me, threatening to if I don't become their slave
21 and if I don't do exactly what they want me to do
22 they're going to kill me and all this. It would be easy
23 if I could just cut it off, and I do, and the way that I
24 cut it off, I have to get my mind on something else.
25 I have to daydream or get into a radio program or

1 something like that. But if I just sit there or think
2 about that, they're right there needling away, trying to
3 get me to go off or go crazy or et cetera.

4 Q Has your memory been affected by the monitor?

5 A Yes, ma'am.

6 Q How so?

7 A I just don't know, maybe it was because of my
8 first few weeks or months being into the jail where I've
9 lost sleep and all the many games that they run on me to
10 -- it's just -- there's just so much that I don't
11 remember after I was first locked up.

12 Q Do you recall what you talked to me and
13 Mr. Brannon about the first two times we met?

14 A No, ma'am, I don't even have the first idea.
15 I remember -- I remember after a period of time you all
16 did come to see me, but what we talked about or where we
17 met at, I have no idea.

18 Q Do you recall talking about any particulars
19 of your case with us after June of '91?

20 A Do I remember what, now?

21 Q Talking about any of the details of your case
22 after June of '91?

23 A Well, we had motion hearings and things like
24 that coming up. But as far as details, I don't --
25 explain that, what you mean.